UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:	Case No. 09-60195
BIG BEAR CREEK ESTATES, LLC,	Chapter 11
Debtor.	Judge Thomas J. Tucker

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ORDER REQUIRING DEBTOR TO AMEND DISCLOSURE STATEMENT

On October 26, 2009, Debtor filed a plan and disclosure statement, in a document entitled "Combined Plan of Reorganization and Disclosure Statement of Big Bear Creek Estates, LLC" (Docket # 38). The Court cannot grant preliminary approval of the disclosure statement contained within this document ("Disclosure Statement"). The Court notes the following problems, which Debtor must correct.

First, Debtor must delete the phrase "a Michigan Corporation" in the first sentence of the Plan on page 2 and replace it with the phrase "a Michigan Limited Liability Company."

Second, the formatting and the content of the Plan is inadequate and must be rewritten according to the following guidelines.

- Debtor must include a separate section in the Plan (*e.g.*, "Article II"),[1] which defines groups of claimants that are not subject to classification and are not entitled to vote on the Plan, and state their treatment under the Plan (*e.g.*, Group I consisting of administrative claims, and Group II consisting of claims that are entitled to priority under 11 U.S.C. § 507(a)(8)). Administrative claims are currently improperly classified in Paragraph II.A of the Plan on page 4 (Class I). In addition, under the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005," administrative claims are covered by 11 U.S.C. § 507(a)(2), not § 507(a)(1), which concerns "domestic support obligations." Debtor must amend the Plan so that the administrative claims are not included in a class under Article

[1] Debtor's Plan already contains an Article II entitled "Classification of Creditors." Debtor could revise this caption to "Claims That Are Not Subject to Classification and Are Not Entitled to Vote under the Plan."

III. Rather, such § 507(a)(2) claims should be included as a group (*e.g.*, as "Group I") in Article II of the Plan.

- Debtor should include a separate section in the Plan (*e.g.*, "Article III"), which defines classes of claimants subject to classification and the class treatments. With regard to each such class, Debtor must: (1) state a clear descriptive name of the class (*e.g.*, "Class I"); (2) state the name of the persons or entities that are being treated under the class (*e.g.*, "Ford Motor Credit Corporation" or "all general unsecured creditors"); (3) state the amount of the claim of each entity or person, if known, and if unknown, state Debtor's best estimate of the amount of the claim (or, if the class is a large one, Debtor may simply estimate the total amount of claims in the class); (4) describe the nature of the claim (*e.g.*, "Entity X asserts a first priority security interest in all the assets of the Debtor to secure a loan it made to Debtor prepetition");(5) state the total amount of the claims in the class; (6) state the treatment proposed; and (7) state whether the class is impaired or unimpaired under the Plan.

- The claims of all secured creditors are currently being treated in the same class (Class II). (*See* Paragraphs II.B on page 4 and III.B. on page 5) Debtor must separately classify and treat the claims of each secured creditor, *e.g.*, the claim of Irwin Union Bank and Trust Co. ("Irwin") must be in a separate class from the claim of Dennis Silvi.

- The Plan at Paragraph III.B on page 6 states: "Further, upon confirmation the lien of Silvi shall be deemed avoided pursuant to 11 U.S.C. [§]506(d) and Debtor may record a copy of this Plan and the Confirmation Order with the Manistee County Register of Deeds to effectuate the avoidance of Silvi's lien." It appears that Debtor is attempting to use § 506(d) to avoid Silvi's lien based on the fact that Silvi did not perfect his lien prepetition. Section 506(d) cannot be used for such an avoidance. This provision applies where the value of the estate's interest in the property securing the lien is insufficient to fully secure the creditor's claim and the Debtor seeks a determination that the claim is undersecured or wholly unsecured for that reason. *See* 11 U.S.C. § 506(a). It appears that Debtor is seeking to avoid Silvi's unperfected lien under 11 U.S.C. § 544. If so, Debtor must amend the Plan to say so.

- Debtor must amend the Plan so that it includes a class of, and the treatment of, the equity interests of Debtor. Unless otherwise provided in the plan or in an order confirming a Chapter 11 plan, the general rule is that the confirmation of a plan "terminates all rights and interests of equity security holders . . . provided for by the plan." 11 U.S.C. § 1141(d)(1)(B). The Plan must indicate who will own the reorganized Debtor (*e.g.*, Debtor must state whether Jason Fitch and Karen Wood will retain their respective 50% ownership interests in Debtor, and if not, who will own the Debtor after confirmation).

Third, Paragraph III.B of the Plan on page 5 provides the treatment for the claim of Irwin. However, the Plan does not state over what period of time this claim will be paid or what periodic amount(s) will be paid. Debtor must provide this information.

Fourth, Paragraph III.C of the Plan on pages 5-6 provides the treatment for the claim of Dennis Silvi ("Silvi"). There are numerous problems with the treatment provided. This paragraph states, in relevant part, that "Silvi's claim is wholly unsecured and shall be treated as a Class III general unsecured claim and shall receive a dividend of 10% only after the secured claim of Irwin Union Bank and Trust Co., is paid." It may be inconsistent to say this, when the treatment provided to Class III general unsecured claims in the Plan at Paragraph III.D on page 6 is that these claims will not be paid "for 54 months or until Classes I-II have been paid in full, whichever shall occur later." Because Silvi's claim is in Class II, and because there is no payment schedule yet stated for the Class II claim of Irwin, there is no way to know whether Irwin's claim will be paid off in 54 months. It is also unclear if Silvi will be paid his 10% dividend immediately after the payment in full of Irwin's claim or at some later date, and whether Silvi will be paid a lump sum distribution or monthly payments of a certain amount. Debtor must state exactly when Silvi will be paid his 10% dividend, and how this dividend will be paid (*e.g.*, monthly or in a lump sum). If Silvi is to be paid monthly, Debtor must state the amount of the monthly payment and the time period over which the monthly payment will be made.

Fifth, Paragraph III.D of the Plan on page 6 provides the treatment of the claims of the general unsecured creditors. It states, in relevant part, that "this Class shall receive **at least** 10% of their respective allowed Claims." (Emphasis added). It is unclear what Debtor means by "at

least." It appears from this statement that this class may receive more than a 10% dividend. Debtor must clarify what it means by "at least." Debtor must also provide the payment schedule for Class III's dividend. Debtor must state the amount(s) claimants in this class will receive, and whether there will be a monthly or lump sum distribution of the dividend. If the dividend is to be paid monthly, Debtor must state the amount of each periodic distribution and the period over which the monthly payments will be made.

Sixth, Paragraph III.D of the Plan on page 6 states: "To participate in any distribution hereunder, creditors whose claims are not scheduled, or whose claims are schedules as disputed, contingent or liquidated, must file a proof of claim with the Bankruptcy Court on or before the bar dates established by the Bankruptcy Court in these proceedings." Debtor must change "liquidated" to "unliquidated" in this sentence. And Debtor must state what the bar date(s) were, and whether they have passed.

Seventh, the Plan at Article VI on page 7 states: "Subsequent to confirmation, the Debtor may, only with leave of the Court, and only so long as it does not materially or adversely affect the interest of Creditors, remedy any defect or omission, or reconcile any inconsistency in this Plan or in the Order of Confirmation, in such manner as may be necessary to carry out the purposes of and effect of this Plan." This statement is inconsistent with 11 U.S.C. § 1127(b). Debtor must delete this.

Eighth, the Plan at Paragraph III.E on page 6 states, in relevant part: "**Class IV.** The Claimants of Class IV shall consist of the members and/or their spouses, and any entity controlled by the same, for unpaid wages if an, and/or unpaid loans." There are several problems with this statement. First, a class does not consist of persons or entities, but rather consists of the

claims of persons or entities. Second, this class is not adequately described. It appears that this class consists of the claims of insiders. (*See* Paragraph IV.E on page 20 of the Disclosure Statement.) Debtor must adequately describe this class, and name the members and spouses and any entity whose claims Debtor intends to include in this class. Third, a claim for wages may or may not be a priority claim under 11 U.S.C. § 507(a)(4), or may be a priority claim only in part. Regarding the claims for wages, Debtor must state whether or not, and to what extent, these claims are § 507(a)(4) priority claims. And to the extent the claims are priority claims, they should not be classified in Article III, but rather they should be grouped and treated in Article II.

Ninth, Debtor must amend Paragraph IV.D on page 20 of the Disclosure Statement to state at least estimated amounts of the Administrative and Priority Claims.

Tenth, Debtor must amend Paragraph VI.E on page 27 of the Disclosure Statement, describing "Effect of Confirmation," so that it states verbatim the applicable language required in Paragraph VI.E of the "Requirements For Information To Include In the Combined Plan and Disclosure Statement (Judge Tucker), which can be found at http://www.mieb.uscourts.gov/judgesCorner/tucker/VIII.html on the Court's website. In this case, that language is as follows:

> *If the plan is confirmed by the Court:*
>
> *1. Its terms are binding on the debtor, all creditors, shareholders and other parties in interest, regardless of whether they have accepted the plan.*
> *2. Except as provided in the plan and in 11 U.S.C. § 1141(d):*
> *(a) In the case of a corporation that is reorganizing and continuing business, as under this Plan,*
> *(1) All claims and interests will be discharged.*
> *(2) Creditors and shareholders will be prohibited from asserting their claims against or interests in the debtor or its assets.*

Accordingly,

IT IS ORDERED that Debtor must file, no later than **November 5, 2009**, an amended combined plan and disclosure statement which corrects the above stated problems.

IT IS FURTHER ORDERED that Debtor also must provide to Judge's chambers, no later than **November 5, 2009**, a redlined version of the amended combined plan and disclosure statement, showing the changes Debtor has made to the "Combined Plan of Reorganization and Disclosure Statement of Big Bear Creek Estates, LLC" (Docket # 38), filed October 26, 2009. Debtor must submit this redlined document to chambers electronically, through the Court's order submission program.

Signed on October 30, 2009

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge